

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---------------------------|--------------------------------|
| WALTER ZANE, ¹ | § |
| | § |
| Petitioner Below- | § No. 714, 2010 |
| Appellant, | § |
| | § |
| v. | § Court Below—Family Court |
| | § of the State of Delaware, |
| MARJORIE HARRIS, | § in and for New Castle County |
| | § File No. CN98-10122 |
| Respondent Below- | § Petition No. 10-10651 |
| Appellee. | § |

Submitted: July 8, 2011
Decided: September 15, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 15th day of September 2011, upon consideration of the appellant's opening brief and the record on appeal,² it appears to the Court that:

(1) The appellant, Walter Zane ("Zane"), filed this appeal from a Family Court order, dated October 21, 2010, which dismissed his request for review of a Commissioner's order because Zane failed to provide the transcripts necessary for the judge to conduct a *de novo* review.³ The Commissioner's order, dated July 14,

¹ Pseudonyms were assigned to the parties pursuant to Supreme Court Rule 7(d).

² The appellee failed to file an answering brief on appeal. Accordingly, the parties were informed that the appeal would be decided on the basis of the opening brief and the record below.

³ See Del. Fam. Ct. Civ. R. 53.1(c) (2011) (providing that a party seeking review of a Commissioner's order shall cause to be prepared a transcript of the proceedings before the Commissioner).

2010, reduced Zane's child support obligation from \$1078 per month to \$442 per month. Having reviewed Zane's contentions on appeal and the record below, we find no abuse of the Family Court's discretion in dismissing Zane's request for *de novo* review. Accordingly, the Family Court's judgment shall be affirmed.

(2) The parties are the parents of one child born in March 1998. The record reflects that the Family Court entered an order on April 13, 2000 directing Zane to pay \$365 per month in child support. That order was modified, effective June 23, 2003, due to a change of circumstances, to require Zane to pay \$950 per month. In 2007, Zane's support obligation was again modified to increase his arrears payment so that his overall monthly support obligation was \$1078. In March 2010, Zane filed a motion for modification of the 2007 support order. In a supporting memorandum, Zane argued that his child support obligation should be reduced because he had been denied the right to counsel at the 2003 modification hearing and because the application of the Melson formula, which is used to calculate support obligations in Delaware,⁴ was unconstitutional in his case and led to a child support obligation that constituted cruel and unusual punishment and violated his equal protection rights because it discriminated against him as a man.

⁴ See *Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989) (discussing the rebuttable presumption known as the "Melson formula," which has been adopted in Delaware as a uniform procedure applied by the Family Court in discharging its duty to calculate support obligations).

(3) After holding a hearing on Zane's petition for modification, the Family Court Commissioner entered an order dated July 14, 2010 finding that there had been a change of circumstances. The Commissioner, therefore, reduced Zane's child support obligation from \$1078 per month to \$442 per month. The Commissioner further ordered that, due to Zane's incarceration,⁵ his payment of support was suspended until thirty days after his release from incarceration, though arrearages would continue to accrue. On August 4, 2010, Zane sought *de novo* review of the Commissioner's order. He also sought a waiver of the costs for production of the transcript. The Family Court denied Zane's request for a waiver of the transcript fee on the ground that Zane was voluntarily out of work. The trial court ordered Zane to pay the transcript fee within 30 days. After Zane failed to pay the required fee, the Family Court dismissed his petition for *de novo* review on October 21, 2010. It is from this order that Zane filed this appeal.

(4) In his opening brief on appeal, Zane contends that the Family Court's 2003 support order violated his constitutional right to counsel, his right to equal protection, his right to be free from slavery, and his right to be free from cruel and unusual punishment. Zane also argues that the Family Court erred in denying his request for transcript at State expense. To the extent Zane's brief challenges the Family Court's 2003 child support proceedings, those issues are untimely and are

⁵ Zane was incarcerated as of May 2009 and apparently was released in October 2010.

not properly before us in this appeal.⁶ Thus, we will not consider any of Zane's arguments with respect to the 2003 proceedings and resulting child support order.

(5) Zane's remaining claim challenges the Family Court's denial of his motion for a copy of the transcript of the Commissioner's hearing at State expense. Zane contends that, because he was incarcerated, he had a constitutional right to transcript at State expense. A petitioner in a civil case, however, does not have an absolute right to transcript at State expense.⁷ Absent an abuse of discretion, we will not disturb a trial court's denial of transcript at State expense.⁸ In this case, the Family Court denied Zane's free transcript request because the court concluded that Zane's unemployment was the result of his own voluntary actions. We find no abuse of discretion in that ruling⁹ and, accordingly, affirm the Family Court's judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁶ See *Bentley v. DCSE*, 2003 WL 22416037 (Del. Oct. 21, 2003).

⁷ *Brown v. State*, 721 A.2d 1263, 1266 (Del. 1998).

⁸ *Id.*

⁹ See *Ford v. DCSE/Parker*, 2009 WL 4673910 (Del. Dec. 8, 2009).